

FARMINGTON POLICE DEPARTMENT

POLICY AND PROCEDURE



Policy Number:
242-18

Effective Date:
07/11/2017

Subject:
Eyewitness Identification

Approved by:

Steven D. Hebbe, Chief of Police



PURPOSE:

To provide general guidelines for eyewitness identification.

POLICY:

It is our policy that, in order to reduce the risk of wrongful conviction of the innocent and to aid in the detection and apprehension of the guilty, officers should adhere to the procedures set forth herein; witness identifications of suspects through lineups should be conducted in such a manner so as to maximize the reliability of witness identifications, minimize unjust accusations of innocent persons and to establish evidence that is reliable and conforms to established legal procedure.

PROCEDURE:

Definitions:

Photo Lineup: An identification procedure, in which an array of at least six photographs, including a photograph of the suspect of an offense and additional photographs of other persons not suspected of the offense, is displayed to an eyewitness, either in hard copy form or via computer, for the purpose of determining whether the eyewitness identifies the suspect of the crime being investigated.

Physical Lineup: An identification procedure, in which a group of persons, including the suspect of an offense and other persons not suspected of the offense, is displayed to an eyewitness for the purpose of determining whether the eyewitness identifies the suspect of the crime being investigated. In as much as our department does not have the facilities or access to the number of participants required to properly conduct Physical Lineups, the use of Physical Lineups is generally discouraged and not practiced.

Filler: A photograph of a person who is NOT suspected of an offense and is included in an identification procedure.

Facial Composite: A non-photographic pictorial representation such as a free hand sketch, Identi-Kit, or other computer-program generated image.

Show-up: An identification procedure in which an eyewitness is presented with a single suspect within a short time following the commission of a crime for the purpose of determining whether the eyewitness identifies the individual as the suspect of the crime being investigated.

Witness Advisements:

Prior to any witness identification process, including both Show-up and Photo Lineup procedures, officers should properly prepare the witness. Witnesses should be advised that:

1. The actual suspect may not be among the persons depicted in the photographs or physically present before the witness;
2. The witness should not feel obligated to identify any photo or person as the suspect, nor should they guess as to which photo or person is the actual suspect;
3. It is just as important to clear innocent persons from suspicion as it is to identify persons who are guilty;
4. The suspect's hairstyle, facial hair, and clothing, may be different than at the time of the incident;
5. It is important that the witness not discuss the case with other witnesses, including not revealing whether they did or did not identify a suspect from the photos or persons present.

Avoiding Officer and Witness "Suggestion":

Officers must not, by word or gesture, suggest opinions to any witness concerning the guilt or innocence of a suspect in any identification procedure. Witnesses making inquiries about an officer's opinion shall be informed of this restriction.

A witness who has taken part in an identification procedure must not be permitted to state conclusions within earshot of another person who is about to be, or has been, a viewer of the identification procedure.

Multiple Witnesses/Suspects:

Each witness is to view any identification procedure separately. Witnesses shall not be permitted to communicate with each other until all identification procedures are completed, and should be instructed not to discuss their identifications with anyone else.

When there are multiple suspects, each identification procedure shall include only one suspect.

Audio Recording and Documentation:

Whenever practical, officers are encouraged to audio record any witness identification procedure from start to finish.

All information regarding any identification procedure shall be documented in the officer's written report, to include:

1. All identification and non-identification results;
2. Confidence or certainty statements made by the witness (these should be quoted);

3. Names of all persons present;
4. Date, time and location;
5. Names of all persons and/or photos used, and the source of the photos.

When Identification Procedures may be Unnecessary:

The use of identification procedure may be unnecessary under the following conditions:

1. When the witness knows the identity of the suspect before the offense occurred or learned the suspect's identity without police assistance after the offense. A single photograph of the suspect named by the witness may be shown to the witness for confirmation that the person named is the suspect, or a photo lineup can be performed to establish additional probable cause.
2. When the witness would be unable to recognize the suspect of the offense, such as when a suspects face is completely covered during the commission of a crime.

When Show-ups are Permissible:

An officer may arrange a "show-up" between a witness and a suspect whenever a potential suspect is located and detained within a reasonable length of time, in proximity to the location of the crime, and fits the specific description of the suspect given by the witness.

If an officer has reasonable suspicion to detain a suspect under the above circumstances, the officer may use reasonable force to detain the suspect where he or she is contacted and have the suspect remain in the officers' presence. If probable cause to arrest develops during the detention, an arrest should be made.

Conducting the Show-up:

A suspect cannot be detained for longer than a reasonable period of time to confirm or refute whether the person detained is the actual suspect. When conducting a show-up, officers will use the following guidelines:

1. Officers at the scene and in contact with the witness shall obtain a detailed description of the suspect before the detained person is shown to the witness. The witness must advise the officers that they will be able to recognize the person who committed the crime prior to the show-up.
2. A suspect should not be taken to the police department for a show-up. The suspect should be detained at the place he/she was located, in the least restrictive manner possible that will ensure the suspect remains with the officer. The witness should be transported to the suspect's location for the show-up. Detained persons should not be transported to the witness' location unless exigent circumstances exist.
3. If possible, do not show the suspect handcuffed, or in the back seat of a patrol car. If the suspect is handcuffed, take measures to conceal this fact from the witness when possible. Detained persons may not be required to put on clothing reported to have been worn by the offender. However, they may be asked, but not required, to speak words uttered by the suspect, or perform other actions of the suspect.

Miranda Warnings should be provided to the suspect prior to the repeating any statements alleged to have been uttered by the suspect.

4. Explain to the witness the person detained may or may not be the suspect and the witness should not feel compelled to make an identification. If the witness makes the identification, do not confirm or corroborate the identification.
5. Show-ups should not be conducted with more than one witness present at a time. If there is more than one witness, the show-up must be conducted separately for each witness, and witnesses should not be permitted to communicate before or after any show-up regarding the identification of the suspect. The same suspect should not be presented to the same witness more than once.
6. Assess witness confidence immediately following the show-up identification. Make note of witness confidence remarks for report documentation.
7. If there are multiple suspects, the suspects must be separated and subjected to separate show-up procedures.
8. Consideration should be given to photographing the suspect(s) in the field as documentation.
9. In emergency circumstances, such as when a witness is in danger of imminent death or blindness, or when a suspect is in danger of imminent death, an immediate show-up may be arranged if medical authorities permit. In these situations, time and location limitations contained in the preceding guidelines can be disregarded. If there is any doubt about an emergency show-up, officers should contact a supervisor and/or prosecutor immediately for guidance.
10. Nothing in these guidelines prohibits the common procedure of transporting a witness in a patrol car to cruise the general area in which a crime has occurred in hopes of spotting the suspect and arranging a show-up identification procedure.
11. No person has a right to have a lawyer present at any show-up procedure.
12. If the detained suspect is not identified by a witness as the perpetrator, and officers lack any other probable cause for an arrest, the suspect should be released after obtaining basic information.

Simultaneous Photo Lineup:

The simultaneous photo lineup consists of showing a group of similar photos to a witness all at the same time. Witnesses should be advised the suspect may or may not be present in the photo lineup. All simultaneous photo lineups shall be done using the following guidelines:

1. Six (6) photos must be used to create the photo lineup, and must include five (5) filler photos with one (1) suspect.
2. The photo of the suspect should resemble as much as possible their appearance at the time of the offense, and should reasonably resemble the witness's description of the suspect.
3. All filler photos should resemble the suspect photo as much as possible, including size, background, race and skin tone, facial features, weight, hair color and length, eyeglasses, etc.

4. If there is more than one suspect, each suspect photo will be placed in the grouping of six separately from any other suspect, and the grouping will be changed so that the suspect's photos are not always in the same position in the grouping.
5. If there is more than one witness, each witness will be shown the lineup separately, the suspect photo shall be placed in a different position in the grouping for each witness, and witnesses will not be permitted to communicate with each other until after the lineup procedure has been completed.
6. If the witness has previously viewed a photo lineup in connection with the identification of another person suspected of involvement in the offense, the fillers in the lineup shall be different from the fillers used in any prior lineups.
7. If identification is made, the witness will be told to circle the identified photo, or write their initials and the date next to it.
8. After explaining the procedure to the witness, give the witness one folder at a time, starting with number one, and give the witness sufficient time to look at each photo. When done viewing each folder, it should be handed back to the officer before viewing the next one.
9. If identification is made, the officer shall assess witness confidence immediately following the identification, and clearly document witness confidence by quoting the witnesses remarks in the police report. If no identification is made, this fact must also be clearly documented.
10. Any and all photo lineups created, viewed, identified or not identified must be kept, and secured with the officer's case.
11. No person has a right to have a lawyer present at any photo lineup whether it takes place before or after an arrest.

Composite and Sketch General Considerations:

When there is no suspect, and the use of a photo lineup has been or is likely to be unsuccessful, a non-photographic pictorial representation such as a free hand sketch, Identi-kit composite, or other computer-program generated composite image may be used. Care must be taken not to unintentionally influence the description provided by a witness while developing such a composite image or sketch, and only those officers trained in the use of such techniques shall use them.